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**BEFORE THE
PHYSICAL THERAPY BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS**

STATE OF CALIFORNIA

In the Matter of the Accusation Against:

DAVID HOWARD PAKOZ
1018 Enchanted Way
Pacific Palisades, CA 90272

Physical Therapist No. PT 10216

Case No. 00_08_1214

A C C U S A T I O N

Respondent.

Complainant alleges:

PARTIES

1. Steven K. Hartzell (Complainant) brings this Accusation solely in his official capacity as the Executive Officer of the Physical Therapy Board of California, Department of Consumer Affairs.

2. On or about February 17, 1981, the Physical Therapy Board of California issued Physical Therapist License Number PT 10216 to David Howard Pakozdi (Respondent).

The Physical Therapist License was in full force and effect at all times relevant to the charges brought herein and will expire on April 3, 2004, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Physical Therapy Board of California (Board), Department of Consumer Affairs under the authority of the below mentioned statutes and regulations.¹

4. Section 2609 of the Code states:

“The board shall issue, suspend, and revoke licenses and approvals to practice physical therapy as provided in this chapter.”

5. Section 2660 of the Code states:

“The board may, after the conduct of appropriate proceedings under the Administrative Procedure Act, suspend for not more than 12 months, or revoke, or impose probationary conditions upon, or issue subject to terms and conditions any license, certificate, or approval issued under this chapter for any of the following causes:

“(a) Advertising in violation of Section 17500.

“(b) Fraud in the procurement of any license under this chapter.

¹All statutory references are to the Business and Professions Code (Code) unless otherwise indicated.

“(c) Procuring or aiding or offering to procure or aid in criminal abortion.

“(d) Conviction of a crime which substantially relates to the qualifications, functions, or duties of a physical therapist. The record of conviction or a certified copy thereof shall be conclusive evidence of that conviction.

“(e) Impersonating or acting as a proxy for an applicant in any examination given under this chapter.

“(f) Habitual intemperance.

“(g) Addiction to the excessive use of any habit-forming drug.

“(h) Gross negligence in his or her practice as a physical therapist.

“(i) Conviction of a violation of any of the provisions of this chapter or of the State Medical Practice Act, or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter or of the State Medical Practice Act. 9

“(j) The aiding or abetting of any person to violate this chapter or any regulations duly adopted under this chapter. 10

“(k) The aiding or abetting of any person to engage in the unlawful practice of physical therapy.

“(l) The commission of any fraudulent, dishonest, or corrupt act which is substantially related to the qualifications, functions, or duties of a physical therapist.

“(m) Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines of the board, thereby risking transmission of blood-borne infectious diseases from licensee to patient, from patient to patient, and from patient to licensee. In administering this subdivision, the board shall consider referencing the standards, regulations, and guidelines of the State Department of Health Services developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, regulations, and guidelines pursuant

to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5 of the Labor Code) for preventing the transmission of HIV, Hepatitis B, and other blood_borne pathogens in health care settings. As necessary, the board shall consult with the Medical Board of California, the California Board of Podiatric Medicine, the Board of Dental Examiners of California, the Board of Registered Nursing, and the Board of Vocational Nursing and Psychiatric Technicians, to encourage appropriate consistency in the implementation of this subdivision.

“The board shall seek to ensure that licensees are informed of the responsibility of licensees and others to follow infection control guidelines, and of the most recent scientifically recognized safeguards for minimizing the risk of transmission of blood_borne infectious diseases.”

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6. Section 2661.5 of the Code states:

“(a) In any order issued in resolution of a disciplinary proceeding before the board, the board may request the administrative law judge to direct any licensee found guilty of unprofessional conduct to pay to the board a sum not to exceed the actual and reasonable costs of the investigation and prosecution of the case.

“(b) The costs to be assessed shall be fixed by the administrative law judge and shall not in any event be increased by the board. When the board does not adopt a proposed decision and remands the case to an administrative law judge, the administrative law judge shall not increase the amount of the assessed costs specified in the proposed decision.

“(c) When the payment directed in an order for payment of costs is not made by the licensee, the board may enforce the order of payment by bringing an action in any appropriate court. This right of enforcement shall be in addition to any other rights the board may have as to any licensee directed to pay costs.

“(d) In any judicial action for the recovery of costs, proof of the board's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.

“(e) (1) Except as provided in paragraph (2), the board shall not renew or reinstate the license or approval of any person who has failed to pay all of the costs ordered under this section.

(2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally renew or reinstate for a maximum of one year the license or approval of any person who demonstrates financial hardship and who enters into a formal agreement with the board to reimburse the board within that one year period for those unpaid costs.

“(f) All costs recovered under this section shall be deposited in the Physical Therapy Fund as a reimbursement in either the fiscal year in which the costs are actually recovered or the previous fiscal year, as the board may direct.”

7. Section 2620.7 of the Code states:

“A physical therapist shall document his or her evaluation, goals, treatment plan, and summary of treatment in the patient record. Patient records shall be maintained for a period of no less than seven years following the discharge of the patient, except that the records of unemancipated minors shall be maintained at least one year after the minor has reached the age of 18 years, and not in any case less than seven years.”

8. Section 2630 of the Code states:

“It is unlawful for any person or persons to practice, or offer to practice, physical therapy in this state for compensation received or expected, or to hold himself or herself out as a physical therapist, unless at the time of so doing the person holds a valid, unexpired, and unrevoked license issued under this chapter.

“Nothing in this section shall restrict the activities authorized by their licenses on the part of any persons licensed under this code or any initiative act, or the activities authorized to be performed pursuant to Article 4.5 (commencing with Section 2655) or Chapter 7.7 (commencing with Section 3500).”²

“A physical therapist licensed pursuant to this chapter may utilize the services of one aide engaged in patient-related tasks to assist the physical therapist in his or her practice of physical therapy. ‘Patient-related task’ means a physical therapy service rendered directly to the patient by an aide, excluding non-patient-related tasks. ‘Non-patient-related task’ means a task related to observation of the patient, transport of the patient, physical support only during gait or transfer training, housekeeping duties, clerical duties, and similar functions. The aide shall at all times be under the orders, direction, and immediate supervision of the physical therapist. Nothing in this section shall authorize an aide to independently perform physical therapy or any physical therapy procedure. The board shall adopt regulations that set forth the standards and requirements for the orders, direction, and immediate supervision of an aide by a physical therapist. The physical therapist shall provide continuous and immediate supervision of the aide. The physical therapist shall be in the same facility as, and in proximity to, the location where the aide is performing patient-related tasks, and shall be readily available at all times to provide advice or instruction to the aide. When patient-related tasks are provided to a patient by an aide, the supervising physical therapist shall, at some point during the treatment day, provide direct service to the patient as treatment for the patient's condition, or to further evaluate and monitor the patient's progress, and shall correspondingly document the patient's record.

“The administration of massage, external baths, or normal exercise not a part of a physical therapy treatment shall not be prohibited by this section.”

9. California Code of Regulations, title 16, section 1399, states:

“A physical therapy aide is an unlicensed person who assists a physical therapist and may be utilized by a physical therapist in his or her practice by performing nonpatient related tasks, or by performing patient related tasks.

“(a) As used in these regulations: 2

“(1) A ‘patient related task’ means a physical therapy service rendered directly to the patient by an aide, excluding nonpatient related tasks as defined below. 4

“(2) A ‘nonpatient related task’ means a task related to observation of the patient, transport of patients, physical support only during gait or transfer training, housekeeping duties, clerical duties and similar functions. 6

“(b) ‘Under the orders, direction and immediate supervision’ means: 7

“(1) Prior to the initiation of care, the physical therapist shall evaluate every patient prior to the performance of any patient related tasks by the aide. The evaluation shall be documented in the patient's record. 8

“(2) The physical therapist shall formulate and record in the patient's record a treatment program based upon the evaluation and any other information available to the physical therapist, and shall determine those patient related tasks which may be assigned to an aide. The patient's record shall reflect those patient related tasks that were rendered by the aide, including the signature of the aide who performed those tasks. 10


“(3) The physical therapist shall assign only those patient related tasks that can be safely and effectively performed by the aide. The supervising physical therapist shall be responsible at all times for the conduct of the aide while he or she is on duty.

“(4) The physical therapist shall provide continuous and immediate supervision of the aide. The physical therapist shall be in the same facility as and in immediate proximity to the location where the aide is performing patient related tasks, and shall be readily available at all times to provide advice or instruction to the aide. When patient related tasks are provided a patient by an aide the supervising physical therapist shall at some point

during the treatment day provide direct service to the patient as treatment for the patient's condition or to further evaluate and monitor the patient's progress, and so document in the patient's record.

“(5) The physical therapist shall perform periodic re_evaluation of the patient as necessary and make adjustments in the patient's treatment program. The re_evaluation shall be documented in the patient's record.

“(6) The supervising physical therapist shall countersign with their first initial and last name, and date all entries in the patient's record, on the same day as patient related tasks were provided by the aide.”

10.  Section 810 of the Code states:


“(a) It shall constitute unprofessional conduct and grounds for disciplinary action, including suspension or revocation of a license or certificate, for a health care professional to do any of the following in connection with his or her professional activities:

“(1) Knowingly present or cause to be presented any false or fraudulent claim for the payment of a loss under a contract of insurance.

“(2) Knowingly prepare, make, or subscribe any writing, with intent to present or use the same, or to allow it to be presented or used in support of any false or fraudulent claim.

“(b) It shall constitute cause for revocation or suspension of a license or certificate for a health care professional to engage in any conduct prohibited under Section 1871.4 of the Insurance Code or Section 550 of the Penal Code.

“(c) As used in this section, health care professional means any person licensed or certified pursuant to this division, or licensed pursuant to the Osteopathic Initiative Act, or the Chiropractic Initiative Act.”

 11. Section 1871.4 of the Insurance Code states:

“(a) It is unlawful to do any of the following:

“(1) Make or cause to be made any knowingly false or fraudulent material statement or material representation for the purpose of obtaining or denying any compensation, as defined in Section 3207 of the Labor Code.

“(2) Present or cause to be presented any knowingly false or fraudulent written or oral material statement in support of, or in opposition to, any claim for compensation for the purpose of obtaining or denying any compensation, as defined in Section 3207 of the Labor Code.

“(3) Knowingly assist, abet, conspire with, or solicit any person in an unlawful act under this section.

“(4) Make or cause to be made any knowingly false or fraudulent statements with regard to entitlement to benefits with the intent to discourage an injured worker from claiming benefits or pursuing a claim.

“For the purposes of this subdivision, ‘statement’ includes, but is not limited to, any notice, proof of injury, bill for services, payment for services, hospital or doctor records, X-ray, test results, medical legal expense as defined in Section 4620 of the Labor Code, other evidence of loss, injury, or expense, or payment.”

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12. Section 550 of the Penal Code states:

“(a) It is unlawful to do any of the following, or to aid, abet, solicit, or conspire with any person to do any of the following:

“(1) Knowingly present or cause to be presented any false or fraudulent claim for the payment of a loss or injury, including payment of a loss or injury under a contract of insurance.

“(2) Knowingly present multiple claims for the same loss or injury, including presentation of multiple claims to more than one insurer, with an intent to defraud.

“(3) Knowingly cause or participate in a vehicular collision, or any other vehicular accident, for the purpose of presenting any false or fraudulent claim.

“(4) Knowingly present a false or fraudulent claim for the payments of a loss for theft, destruction, damage, or conversion of a motor vehicle, a motor vehicle part, or contents of a motor vehicle.

“(5) Knowingly prepare, make, or subscribe any writing, with the intent to present or use it, or to allow it to be presented, in support of any false or fraudulent claim.

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“(6) Knowingly make or cause to be made any false or fraudulent claim for payment of a health care benefit.

“(7) Knowingly submit a claim for a health care benefit that was not used by, or on behalf of, the claimant.

“(8) Knowingly present multiple claims for payment of the same health care benefit with an intent to defraud.

“(9) Knowingly present for payment any undercharges for health care benefits on behalf of a specific claimant unless any known overcharges for health care benefits for that claimant are presented for reconciliation at that same time.

“(10) For purposes of paragraphs (6) to (9), inclusive, a claim or a claim for payment of a health care benefit also means a claim or claim for payment submitted by or on the behalf of a provider of any workers' compensation health benefits under the Labor Code.

“(b) It is unlawful to do, or to knowingly assist or conspire with any person to do, any of the following:

“(1) Present or cause to be presented any written or oral statement as part of, or in support of or opposition to, a claim for payment or other benefit pursuant to an insurance policy, knowing that the statement contains any false or misleading information concerning any material fact.

“(2) Prepare or make any written or oral statement that is intended to be presented to any insurer or any insurance claimant in connection with, or in support of or opposition to, any claim or payment or other benefit pursuant to an insurance policy, knowing that the statement contains any false or misleading information concerning any material fact.

“(3) Conceal, or knowingly fail to disclose the occurrence of, an event that affects any person's initial or continued right or entitlement to any

insurance benefit or payment, or the amount of any benefit or payment to which the person is entitled.

“(4) Prepare or make any written or oral statement, intended to be presented to any insurer or producer for the purpose of obtaining a motor vehicle insurance policy, that the person to be the insured resides or is domiciled in this state when, in fact, that person resides or is domiciled in a state other than this state.”

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13. Section 2621 of the Code states

“Nothing in this chapter shall be construed as authorizing a physical therapist to practice medicine, surgery, or any other form of healing except as authorized by section 2620.”

14. Section 2620 of the Code states as follows:

“Physical therapy means the art and science of physical or corrective rehabilitation or of physical or corrective treatment of any bodily or mental condition of any person by the use of the physical, chemical, and other properties of heat, light, water, electricity, sound, massage, and active, passive, and resistive exercise, and shall include physical therapy evaluation, treatment planning, instruction and consultative services. The use of roentgen rays and radioactive materials, for diagnostic and therapeutic purposes, and the use of electricity for surgical purposes, including cauterization, are not authorized under the term ‘physical therapy’ as used in this chapter, and a license issued pursuant to this chapter does not authorize the diagnosis of disease.”

15. Section 2052 of the Code states:

“Any person who practices or attempts to practice, or who advertises or holds himself or herself out as practicing, any system or mode of treating the sick or afflicted in this state, or who diagnoses, treats, operates for, or prescribes for any ailment, blemish, deformity, disease, disfigurement, disorder, injury, or other physical or mental condition of any person, without having at the time of so doing a valid,

unrevoked, or unsuspended certificate as provided in this chapter, or without being authorized to perform such act pursuant to a certificate obtained in accordance with some other provision of law, is guilty of a misdemeanor.”

2 FIRST CAUSE FOR DISCIPLINE

3 (Gross Negligence)

16. Respondent is subject to disciplinary action under section 2660, subdivision (h) of the Code in that respondent was grossly negligent in the practice of physical therapy. The circumstances are as follows:

Patient D.K.

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A. On or about September 8, 1999, respondent performed an initial evaluation of patient D.K.. Respondent’s chart did not contain a prescription or list a diagnosis from a referring physician. In a letter to Dr. E.H., M.D., dated September 9, 1999, respondent listed his impression of the diagnosis as L4-5 degenerative disc disease. Thereafter, respondent treated patient D.K. without a physician’s prescription or diagnosis in the chart.

B. On and after September 8, 1999, respondent was grossly negligent in the physical therapy provided to patient D.K. because he treated the patient without a proper diagnosis.

Patient J.H.

C. On or about October 13, 1995, respondent performed an initial evaluation of patient J.H. Respondent’s chart did not contain a prescription or list a diagnosis from a referring physician. In a letter to a physician, dated October 16, 1995, respondent listed his impression of the diagnosis as L4-5 Lumbar disc syndrome. Thereafter, respondent treated patient J.H. without a physician’s prescription or diagnosis in the chart.

D. On and after October 13, 1995, respondent was grossly negligent in the physical therapy provided to patient J.H. because he treated the patient without a proper diagnosis.

Patient N.D.

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E. On or about May 21, 1996, respondent performed an initial evaluation of patient N.D. Respondent's chart did not contain a prescription or list a diagnosis from a referring physician. In a letter to an insurance company, dated September 17, 1996, respondent listed his impression of the diagnosis as L5-S1 instability, Lumbar disc syndrome. Thereafter, respondent treated patient N.D. without a physician's prescription or diagnosis in the chart. Between May 21, 1996 and November 6, 1996, respondent provided physical therapy to patient N.D. without a physician's diagnosis. Between May 21, 1996 and November 6, 1996, respondent billed patient N.D.'s insurance carrier for physical therapy treatments based on his own diagnosis of lumbar instability. Between May 21, 1996 and November 6, 1996, patient N.D.'s insurance carrier paid respondent \$2196.53 based on respondent's billings as described above.

F. On and after May 21, 1996, respondent was grossly negligent in the physical therapy provided to patient N.D. because he treated the patient without a proper diagnosis.

G. On and after May 21, 1996, respondent was grossly negligent because he billed patient N.D.'s insurance carrier for his treatment of patient N.D. without a physician's diagnosis.

Patient B.G.

H. On or about May 24, 1999, respondent performed an initial evaluation of patient B.G. At that time, respondent's chart did not contain a prescription or list a diagnosis from a referring physician. Respondent treated patient B.G. on May 24, 26, 28 and June 3, 1999, without a prescription or a diagnosis from a referring physician. On or about June 4, 1999, a diagnosis of that date was entered into

the chart of patient B.G. Thereafter, respondent treated the patient with a diagnosis in the chart.

I. On and about May 24, 26, 28 and June 3, 1999, respondent was grossly negligent in the physical therapy provided to patient B.G. because he treated the patient without a proper diagnosis.

Patient L.K.

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J. On or about January 12, 1995, respondent performed an initial evaluation of patient L.K. pursuant to a prescription from a referring physician which contained a diagnosis of right lateral ankle strain. Thereafter patient L.K. was given physical therapy treatments performed by physical therapy aide Emily Pangan. Respondent's chart for patient L.K. did not note the delegation of treatment to Pangan, nor reflect that respondent was properly supervising Pangan, who failed sign the chart for the treatments she rendered.

K. On or about February 16, 1995, while patient L.K. was receiving physical therapy from Pangan using a sport cord attached to a wall, the cord and its metal base detached from the wall and hit patient L.K. in the mid-back region. Respondent was informed of the incident and evaluated and treated patient L.K. Respondent did not inform the referring physician, or any other physician, of the incident. Respondent thereafter treated both the original diagnosed ankle injury and the undiagnosed back injury through on or about May 3, 1995. Respondent billed patient L.K. and her insurance carrier for the undiagnosed back injury treatments as well as the ankle injury treatments. Thereafter patient L.K. underwent two surgeries for the undiagnosed back injury (partially dislocated shoulder).

L. On or about February 16, 1995, and thereafter, respondent was grossly negligent in providing physical therapy to patient L.K. based on the following circumstances:

- (1) Respondent failed to refer patient L.K. to a physician for diagnosis and treatment.
- (2) Respondent continued treating patient L.K. for her back injury without a physician diagnosis.

(3) Respondent billed patient L.K. and/or her insurance carrier for the treatments of her back injury for which there was no physician diagnosis.

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SECOND CAUSE FOR DISCIPLINE

(Aiding or Abetting the Unlawful Practice of Physical Therapy)

17. Respondent is subject to disciplinary action under section 2660, subdivisions (j) and (k), and 2630 of the Code and California Code of Regulations, title 16, section 1399, in that respondent aided or abetted the unlawful practice of physical therapy. The circumstances are as follows:

A. The facts and circumstances alleged in paragraphs 16.J. and 16.K. are incorporated here as if fully set forth.

B. On or about January 12, 1995, and thereafter, including February 16, 1995, respondent aided and abetted the unlicensed practice of physical therapy by permitting physical therapy aide Emily Pangan to provide physical therapy to patient L.K. without providing appropriate supervision and/or properly documenting the patient chart, including documenting tasks delegated to the aide, documenting supervision of the aide, and documentation by the aide and initialing of same by respondent.

THIRD CAUSE FOR DISCIPLINE

(Insurance Fraud)

18. Respondent is subject to disciplinary action under section 810, subdivisions (a) (1) and (2) of the Code, section 1871.4, subdivisions (a)(1) and (2), of the Insurance Code, and section 550, subdivisions (a)(1), (5) and (6) and (b)(1) and (2), of the Penal Code in that respondent engaged in insurance fraud. The circumstances are as follows:

A. The facts and circumstances alleged in subparagraphs 16.E., 16.G., 16.K. and 16.L.(3). are incorporated here as if fully set forth.

B. By the facts and circumstances alleged in paragraph 15.A. above, respondent (1) made false statements for purposes of obtaining compensation by creating physical therapy records containing a diagnosis which falsely purported to be a physician diagnosis and (2) presented said false records in support of claims for compensation by an insurance carrier.

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FOURTH CAUSE FOR DISCIPLINE

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(Unlicensed Practice of Medicine)

19. Respondent is subject to disciplinary action under sections 2620, 2621, 2660, subdivision (i), and section 2052 of the Code in that respondent engaged in the practice of medicine. The circumstances are as follows:

A. The facts and circumstances alleged in subparagraphs 16.A., 16.B., 16.C, 16.D., 16.E., 16.F., 16.H., 16.I., 16.K., and 16.L.(2). are incorporated here as if fully set forth.

B. By the facts and circumstances alleged in paragraph 19.A. above, respondent engaged in the unlicensed practice of medicine by providing physical therapy based on his own diagnosis of the patients, rather than the diagnosis of a physician.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Physical Therapy Board of California issue a decision:

1. Revoking or suspending Physical Therapist Number PT 10216, issued to David Howard Pakozdi;
2. Ordering David Howard Pakozdi to pay the Physical Therapy Board of California the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 2661.5;

3. Taking such other and further action as deemed necessary and proper.

DATED: November 7, 2002

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Original signed by Steven K. Hartzell

STEVEN K. HARTZELL

Executive Officer

Physical Therapy Board of California

Department of Consumer Affairs

State of California

Complainant

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